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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 HOSEA SWOPES,

12 Petitioner,

13 v.

14 A. CIOLLI,

15 Respondent.  
16  
17

No. 1:21-cv-00062-DAD-JLT (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DISMISSING  
PETITION

(Doc. No. 9)

18 Petitioner Hosea Swopes is a federal prisoner proceeding *pro se* and *in forma pauperis*  
19 with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. No. 1.) The matter  
20 was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local  
21 Rule 302.

22 On March 15, 2021, the assigned magistrate judge issued findings and recommendations,  
23 recommending that the pending petition be dismissed for lack of jurisdiction because petitioner  
24 challenges the validity and constitutionality of his sentence imposed by the United States District  
25 Court for the Eastern District of Missouri, and does not assert a claim of actual innocence or  
26 demonstrate that he never had an unobstructed procedural opportunity to present his claims such  
27 that relief under 28 U.S.C. § 2241 may be sought. (Doc. No. 9 at 4, 6.) Further, the magistrate  
28 judge noted that recharacterization and transfer of the pending petition to the Eastern District of

1 Missouri would not be in the interest of justice because the petition would be an unauthorized  
2 second or successive 28 U.S.C. § 2255 motion. (*Id.* at 6.) The pending findings and  
3 recommendations were served on all parties with notice that any objections thereto were to be  
4 filed within twenty-one (21) days of service. (*Id.* at 3.) The time to file objections has since  
5 passed and no objections have been filed.

6 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a  
7 de novo review of the case. Having carefully reviewed the entire file, the court concludes that the  
8 magistrate judge's findings and recommendations are supported by the record and proper  
9 analysis.

10 The plain language of 28 U.S.C. § 2253(c)(1) does not require a certificate of  
11 appealability because this is an appeal from an order denying a petition for writ of habeas corpus  
12 pursuant to 28 U.S.C. § 2241, not a final order in a habeas proceeding in which the detention  
13 complained of arises out of process issued by a State court. *Forde v. U.S. Parole Commission*,  
14 114 F.3d 878 (9th Cir. 1997); *see Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008) (plain  
15 language of 28 U.S.C. § 2253(c)(1) does not require federal prisoners bringing section 2241  
16 petitions to obtain a certificate of appealability to appeal, unless the section 2241 petition is a  
17 section 2255 petition in disguise"); *Ojo v. INS*, 106 F.3d 680, 681-682 (5th Cir. 1997); *Bradshaw*  
18 *v. Story*, 86 F.3d 164, 166 (10th Cir. 1996). Therefore, no certificate of appealability will be  
19 issued.

20 Accordingly,

- 21 1. The findings and recommendations issued on March 15, 2021 (Doc. No. 9) are  
22 adopted in full;
- 23 2. The petition for writ of habeas corpus is dismissed;
- 24 3. No certificate of appealability will issue because none is required; and
- 25 4. The Clerk of the Court is directed to close this case.

26 IT IS SO ORDERED.

27 Dated: May 3, 2021

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UNITED STATES DISTRICT JUDGE